in his discretion, grant to any person in the Federation a licence to keep for use and use a press for the printing of documents . . . ." and that "the licence shall be in the prescribed form." Rule 3 of the Printing Presses Rules, 1957 provides that "a licence or permit granted under the provisions of the Ordinance shall be in the form set out in the First Schedule to these Rules with such variations as the circumstances of such case may require." The form of the licence under the First Schedule is as follows:—

"Under the provisions of section 3 of the Printing Presses Ordinance, 1948, a licence is hereby granted to . . . and keep for use and use a press for the printing of documents at*

* Here insert a full and precise description of the place. Where the user of the printing press does not occupy the whole house the floor or number (if any) of the room must be specified."

It will be observed that the essential purpose of the licence issued by the Minister under the Printing Presses Ordinance, 1948 is to authorize a person to keep for use and use a press for the printing of documents. There is nothing in the Ordinance to suggest that the Minister is concerned with the place at which such printing press is to be kept and used. It is true that the statutory licence under the Printing Presses Rules, 1957 specifies the place, but this is only incidental to the use of the printing press. The place inserted in the licence would obviously be the place mentioned in the application for the licence. The Minister does not direct his mind to the place in granting or refusing the licence. The licence required under the bye-law, on the other hand, is strictly a licence for the use of the premises for trading purposes. In other words, the licence issued by the Minister is a licence *simpliciter* in respect of the use of the printing press and the licence by the Commissioner is a licence *simpliciter* in respect of the use of the premises for trade purposes. The two licences are independent of each other. I do not therefore see how it can be argued that the bye-law under which the respondent was charged expressly or by necessary implication professes to alter the general law of the land.

To my mind the bye-law is neither repugnant to the Printing Presses Ordinance, 1948, nor inconsistent with the Printing Presses Rules, 1957. It would appear from his grounds of judgment that the learned magistrate understood the bye-law to mean that "no person shall run a printing press for trading purposes without a licence from the Commissioner." With all respect to the learned magistrate, that is not what the bye-law says. What the bye-law does say is that no person shall use a place within the Municipality for certain trade purposes without a licence from the Commissioner. As was stated in *White* v. *Morley*,[2] a bye-law is not bad because it deals with something that is not dealt with by the general law.

For the reasons I have stated I am of the opinion that the learned magistrate misdirected himself on the law and was wrong in acquitting the respondent. I would allow the appeal, set aside the order of acquittal and remit the case back to the magistrate with a direction that he call on the defence. The respondent is directed to appear before the magistrate tomorrow.

Appeal allowed.

ABDUL MANAP v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) November 30, 1966]

[Raub — Criminal Appeal No. 6 of 1966]

Penal Code, s. 414 — Possession of stolen property — Whether presumption under s. 114 of Evidence Ordinance, 1950, applies where accused is charged for disposing of stolen property.

This was an appeal against the conviction of the appellant for dishonestly disposing of stolen property an offence under section 414 of the Penal Code. It was argued on appeal, *inter alia*, that there was not enough evidence to support the learned magistrate's findings of fact and that the presumption under section 114 of the Evidence Ordinance had been wrongly invoked in this case, as this was a case of disposal of stolen property.

Held: (1) it was open to the learned magistrate having invoked the presumption under section 114 of the Evidence Ordinance to find that the appellant was a receiver of the property and subsequently to hold that he had disposed of the property;

(2) on the facts of the case the learned magistrate was entitled to come to the conclusion that the appellant was guilty of the offence.

Case referred to:—

(1) *Public Prosecutor* v. *Soong Chak Sung* [1955] M.L.J. 144.

MAGISTRATE'S CRIMINAL APPEAL.

Wan Mustapha bin Haji Ali for the appellant.

Hashim bin Abdul Majid (Deputy Public Prosecutor) for the respondent.

Raja Azlan Shah J.: The appellant was convicted under section 414 of the Penal Code and sentenced to six months imprisonment. He appealed against both conviction and sentence and set up thirteen grounds most of which, to my mind, can be grouped under one or two heads. I have heard the arguments of counsel on behalf of the appellant and I am satisfied that most of them do not require discussion on the ground that they are devoid of substance. However, I feel that there are two substantial grounds of appeal which merit consideration, namely, whether there is enough evidence to support the learned magistrate's conclusions of fact, and whether the presumption under section 114 of the Evidence Ordinance had been properly invoked and, if so, what are the consequences.

The facts as relied upon by the learned

magistrate are as follows. The complainant, who runs a chicken farm on a large scale, discovered one morning that the fowl shed had been broken into and twenty fowls and six turkeys were missing. It has not been suggested that so far the facts are not borne out by the evidence. Some eight hours later a fowl dealer (P.W.4) bought four turkeys from the appellant. That was witnessed by a lady who was called as a prosecution witness (P. W.3). That evidence has not been challenged by the accused in the lower court. To my mind, that conclusion of fact was also borne out by the evidence and I see no reason to dispute it. In due course the police took possession of the four turkeys and they were later identified by the complainant as his by the nails which had been cut. It was argued on behalf of the appellant that that finding is not supported by the evidence. It therefore follows that I must review the evidence whether, as a matter of law, it is sufficient to justify the learned magistrate's finding of fact. To my mind, the learned magistrate has delivered an elaborate and, in my view, considered judgment in which, after examining all the evidence, in particular the evidence with regard to identification, he stated his conclusions of fact. The evidence before him was such as to entitle him to say that there was ample evidence that the appellant was in possession of property recently stolen. So far as the evidence is concerned, I share the view expressed by the learned magistrate. So far as his conclusions of fact are concerned, they possess the sanctity of pure findings of fact with which, of course, this court will not interfere.

The learned magistrate went on to apply the law to the facts as found by him, and I quote his conclusion:—

"There was ample evidence that the second accused (appellant) was in possession of the stolen turkeys. This was borne out by the evidence of the fowl dealer (P.W.4) who bought the turkeys from the second accused. P.W.4 could identify second accused without any room for mistake. The transaction was also observed from a distance by another witness (P.W.3). The turkeys were identified by P.W.1 as the missing ones. Based on the finding of fact that the second accused was in possession of the stolen turkeys I invoked section 114 illustration (a) of the Evidence Ordinance No. 11 of 1950 and presumed that he had received the stolen property knowing them to be stolen."

He therefore called upon the appellant to enter upon his defence. The learned magistrate considered the defence which was one of *alibi* and concluded in these words:—

"The defence of accused No. 2 (appellant) was one of *alibi*. He said that on 17th and 18th May he was all the time in the house of one Shamsuddin (D.W.1) as at that time Shamsuddin was ill. Shamsuddin said when he was sick second accused used to visit him. Another witness (D.W.2) saw accused No. 2 in Shamsuddin's house but he could not remember the date. Another defence witness (D.W.3) said he did not know if second accused was in Shamsuddin's house at 2.00 p.m. on 18.5.66.

In my opinion the defence of *alibi* was a fabricated one and that not one of the defence witnesses could create a reasonable doubt to rebut the evidence of the prosecution. No one of the defence witnesses could say with certainty that the second accused was in Shamsuddin's house at the time when he was alleged to be selling those four turkeys to P.W.4. In the face of very strong and honest evidence of P.W.4 and P.W.3 I am strongly of the opinion that the defence of *alibi* as put up by the second accused had failed to rebut the case for the prosecution and I therefore found him guilty on the alternative charge under section 414 of the Penal Code and sentenced him to six months imprisonment."

The words used by the learned magistrate in giving his decision indicate, in my view, that he was following the test laid down in *Public Prosecutor* v. *Soong Chak Sung* [1] which was concerned with the degree of explanation which would entitle a person in possession of property recently stolen to an acquittal. I see no reason to think that in reaching his decision he applied the wrong test or that he failed correctly to apply the presumption under section 114 of the Evidence Ordinance. As a variant or possibly as an extension of his argument, counsel on behalf of the appellant submitted that the learned magistrate had erred in law in invoking the presumption under section 114 of the Evidence Ordinance to the facts as found by him. He argued that once the learned magistrate had found as a fact that the appellant was in possession of property recently stolen, he could, under the presumption, either be the thief or a receiver but not a person voluntarily assisting in disposing of stolen property under the provisions of section 414 of the Penal Code. Counsel contended that to consider otherwise would be an unjustifiable extension of the presumption. Up to that point I am prepared to express my approval with counsel's proposition. Be that as it may, I am of the view that a receiver can be charged with receiving under section 411 of the Penal Code and also under section 414 of the Penal Code, but he cannot be convicted for both offences on the ground that those two offences are parts of one continuous transaction. It follows, therefore, that once the learned magistrate had invoked the presumption, it was open to him to find, which he did, that the appellant was a receiver. Once the learned magistrate did so find that the appellant was a receiver it was equally open to him to find, in view of the peculiar evidence of the present case which went a bit further than mere retaining of stolen property, that he was disposing of the same. In the view which I have taken, the argument of counsel on this point cannot succeed.

Assuming that section 114 of the Evidence Ordinance does not arise, being improperly invoked by the learned magistrate, I am satisfied that there is sufficient evidence to support the

conviction under section 414 of the Penal Code. That being the evidence of the lady who witnessed the transaction, the evidence of the fowl dealer who bought the four turkeys from the appellant. and the evidence of the complainant who identified his four turkeys.

Counsel for the appellant has submitted that the sentence is manifestly excessive in view of the proved facts. In my view, the decision of the learned magistrate in regard to sentence is clearly a decision in the exercise of his discretion. It is now accepted that interference with such an exercise can only be justified if the learned magistrate had acted on some wrong principle, committed some error of law, or failed to consider matters which demanded consideration. I cannot think that in dealing with matters of sentence the learned magistrate committed any error of law. Nor did he fail to consider all matters demanding consideration. Nor did he act on any wrong principle.

Both the appeals against conviction and sentence are dismissed.

I have been told by counsel on behalf of the appellant that his client had been imprisoned for 71 days. The circumstances leading to his imprisonment are that his counsel had failed to file the notice of appeal in time, whereby the appellant was re-arrested and remanded for 71 days, after which he successfully applied for bail. Therefore, in my view, this period of 71 days which he has undergone should be deducted from the term of imprisonment imposed by the lower court.

Appeal dismissed.

Solicitors: *Wan Mustapha & Co.*

MOHAMED BIN SALLEH v. PUBLIC PROSECUTOR

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Ong Hock Thye F.J.) December 6, 1966]

[K.L. — F.C. Civil Appeal No. X 33 of 1966]

Criminal Law and Procedure — Trial — Adjournment of court before close of prosecution case to view locus in quo — Questions put to accused by jurors — Admission by accused.

In this case the appellant had been charged with murder. Before the close of the prosecution the court adjourned to view the *locus in quo*. This was done at the request of the defence counsel who explained that his object in requesting the view was to determine whether a person standing on the steps of the deceased's house was visible from a particular point. At the same time the jurors questioned the accused and he made a statement which was in effect an admission that he was at or near the scene of the crime.

Held: it is contrary to established principles in a criminal trial to permit the jury to question the accused before the close of the prosecution case. This mistake amounted to more than a mere irregularity. The fact that the defence counsel did not object cannot cure a mistake which must have inevitably prejudiced the appellant. Since the trial was thus vitiated there was no alternative but to quash the conviction and order a retrial.

CRIMINAL APPEAL.

Appellant in person.

Syed Agil Barakbah (Deputy Public Prosecutor) for the respondent.

Ong Hock Thye F.J.: The appellant was tried before a judge and jury in the High Court at Kota Bharu on a charge of murder, but was convicted of housebreaking, an offence punishable under section 454 of the Penal Code, and was sentenced to four years imprisonment. We allowed his appeal and ordered a retrial on grounds which we intimated would be delivered later.

The grounds of appeal merely raised misdirections by the learned trial judge as to the law and the facts relating to the offence of housebreaking, but there were no merits on either ground. The conviction, however, was quashed for a far more serious reason which seemed to have been overlooked all round because, perhaps, the record had not been scrutinised with the care that such a case and, indeed, every case deserves.

The facts are free of all complications, although the prosecution case rested entirely on circumstantial evidence. During the night of November 21-22, 1965, a middle-aged woman, Sa'adiah binti Haji Umat, was murdered in the bedroom of her house at Kampong Bukit Saji, Gual Periok, District of Pasir Mas. She was living alone, and her death was discovered by her niece, Bidah, and the latter's husband, Mohammed, who called at the deceased's house at daybreak, on November 22. The appellant, a rubber-tapper, who lived some miles away at Kampong Bukit Tandak, was arrested on November 27. In his possession were found $78 in cash, a gold ring and a goldsmith's receipt. He was duly identified by the goldsmith, who stated in his evidence that the appellant had sold him four bangles, a chain and a locket for $152 early on the morning of November 23. These articles had been melted down and made into other jewellery, with the exception of the locket, which Mohammed and Bidah were, or claimed to be, able to identify as the property of the deceased.

Three prosecution witnesses, Mohammed, his wife Bidah, and a neighbour of the deceased, Ahmad, claimed to have seen the appellant in the vicinity of the deceased's house shortly before the discovery of the crime. In fact, Mohammed and Bidah went further: they said that they actually saw the appellant descending the steps of the deceased's house. They were cross-examined by defence counsel on their identification of the appellant and it was clear from the